

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: TED SMITH dba TJS FARMS Buena Vista County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 20 <u>12</u> -AFO- 02
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TO: Ted Smith
TJS Farms
6310 150th Avenue
Storm Lake, Iowa 50588

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Ted Smith for the purpose of resolving issues involving an uncertified manure service and an uncertified applicator working for Mr. Smith's company. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jeff Prier, Field Office 3
Iowa Department of Natural Resources
Gateway North Mall – 1900 North Grand
Spencer, Iowa 53101
Phone: 712/262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Height, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Ted Smith owns and operates TJS Farms. TJS Farms is a commercial manure service.

2. On October 5, 2011, Jeff Prier, DNR Field Office 3 Environmental Specialist Senior, conducted a manure applicator inspection at a field located in Section 32, Coon Township, Buena Vista County, Iowa. Leo Avina was working for TJS Farms at this location hauling and land applying manure from a confinement feeding operation. Mr. Prier asked if Mr. Avina was a certified manure applicator. Mr. Avina stated he went to the class in the spring and Ted Smith, his employer, had the certification card.

3. On October 6, 2011, Mr. Prier checked the certification status of Mr. Avina and TJS Farms. TJS Farms had been certified as a commercial manure service, but the certification expired on March 1, 2010. TJS Farms had been certified in 2004, 2005, 2006, 2008, and 2009. Mr. Avina had been certified as a manure applicator, but his certification had expired on March 1, 2010.

4. On October 6, 2011, Mr. Prier spoke to Mr. Smith on the telephone regarding the certification issues. Mr. Smith indicated that he had forgotten to send in the forms from the spring 2011 class. Mr. Smith indicated that the company had applied manure in 2010, including fall 2010. Mr. Smith indicated that he intended to ensure that he and Mr. Avina were properly certified immediately so that they could continue to apply manure. Following the telephone conversation, Mr. Prier spoke to the Iowa State University Extension Office for Buena Vista County to see if Mr. Smith or Mr. Avina had attended the spring 2011 class. There was no record of either attending the class. The Extension Office did state that Mr. Smith had already arranged for him and Mr. Avina to take the class. Mr. Prier also contacted the DNR Licensing Section to review attendance records for 2011 and 2010. There was no record of either Mr. Smith or Mr. Avina attending a manure applicator education class.

5. On October 10, 2011 DNR issued a Notice of Violation letter to Mr. Smith for failing to properly certify his employees and failing to be a properly certified commercial manure service. The letter stated that the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

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2. Iowa Code section 459.314A prohibits a person from engaging in the business of a commercial manure service unless the DNR issues a commercial manure service license to the person. 567 IAC 65.1 defines a commercial manure service as a sole proprietor or business association engaged in the business of transporting, handling, storing, or applying manure for a fee. During Mr. Prier's investigation it was determined that TJS Farms had been a certified commercial manure service but that the certification had expired on March 1, 2010. During the investigation it was determined that an employee of TJS Farms was hauling and land applying manure. The above-mentioned facts indicate a violation of this provision.

3. Iowa Code section 459.315(1) states that a person shall not act as a commercial manure service representative unless the person is certified. Iowa Code section 459.315(2) states that a person who is required to be certified as a commercial manure service representative must be certified each year. 567 IAC 65.1 defines a commercial manure service representative as a manager, employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the service. During Mr. Prier's investigation it was determined that Mr. Avina had been a certified as a manure service representative, but that his certification had expired on March 1, 2010. During the investigation it was determined that Mr. Avina was hauling and land applying manure. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Ted Smith dba TJS Farms agrees to do the following:

- Compliant*
included
1. Ted Smith dba TJS Farms shall ensure the commercial manure service and all employees are properly certified at all times when transporting, handling, storing, or applying manure; and
 2. Ted Smith dba TJS Farms shall pay an administrative penalty of \$5,000.00, within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing

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the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$5,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC Chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” TJS Farms saved time and money by not ensuring that it and its employees were properly certified. TJS Farms delayed the expenses of the training and certification fees. Mr. Smith admitted that manure was applied during the fall of 2010 and TJS Farms was not certified at the time; the annual certification fee of \$100.00 was not paid for 2010. An estimated economic benefit of \$200.00 is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The manure applicator certification program is an important component of the animal feeding operation regulations. The program ensures that manure is transported and applied properly. TJS Farms’ failure to ensure that it and its employees were properly certified threatens the integrity of the water quality program. Therefore, \$2,300.00 is assessed for this factor.

Culpability – Mr. Smith has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that his conduct is subject to DNR’s rules. The manure applicator certification program and its requirements have been widely publicized throughout the animal feeding industry. TJS Farms had been certified in previous years and Mr. Smith was aware of the certification requirements. TJS Farms applied manure in 2010 and 2011 when it was not certified to do so. As a commercial manure service owner, Mr. Smith is responsible for ensuring that his employees are properly certified. Therefore, \$2,500.00 is assessed for this factor.


VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Ted Smith dba TJS Farms. For that reason Ted Smith dba TJS Farms waives the right to appeal this administrative consent order or any part thereof.

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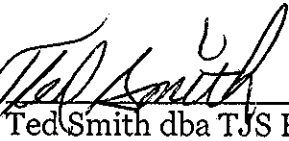
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 5th day of
January, 2012.



Ted Smith dba TJS Farms

Dated this 3 day of
Jan, 2012.

Kelli Book; Field Office 3 (Jeff Prier); EPA; VIII.D.4